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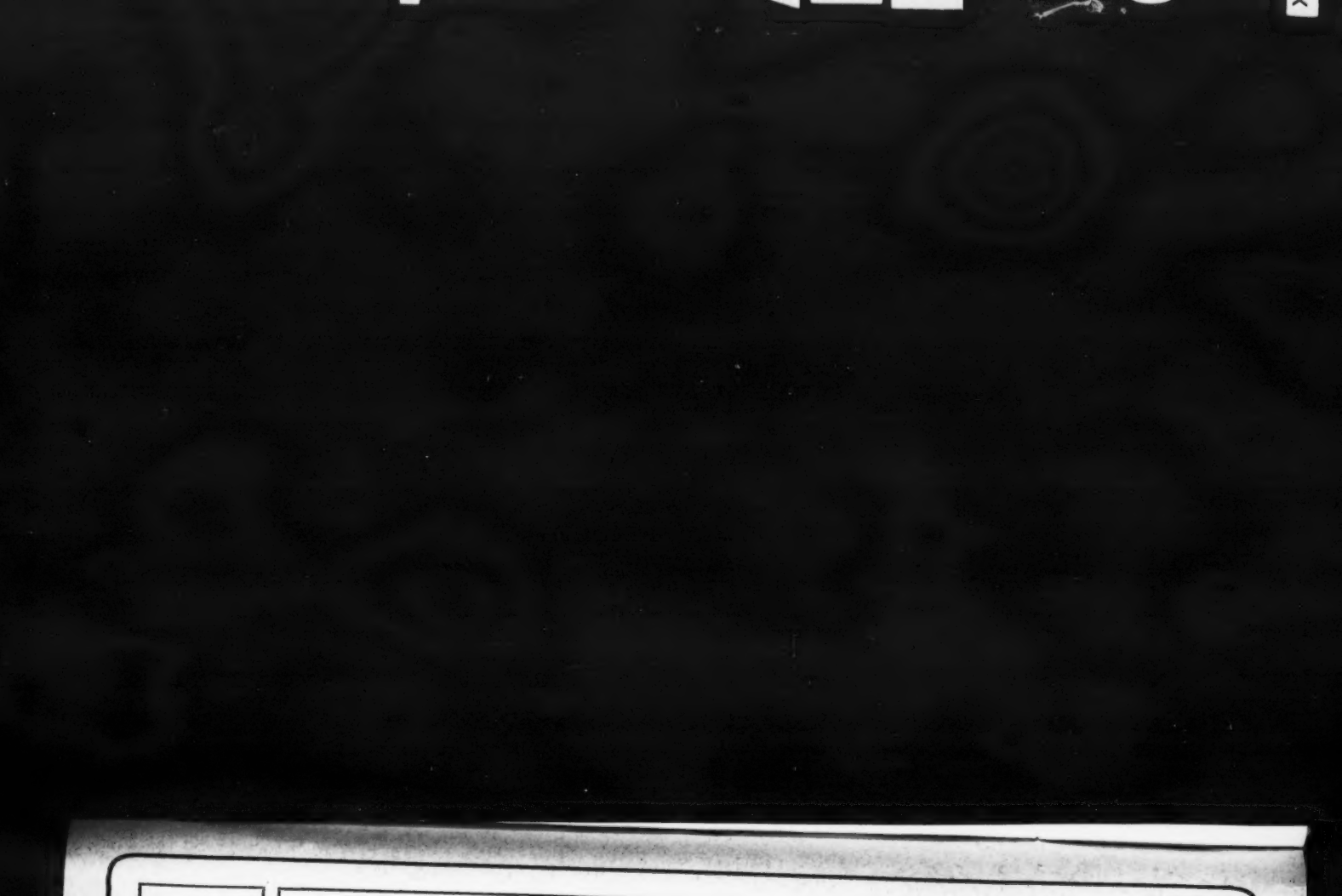

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Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS REPORTS ANNOTATED

LEGAL NEWS NOTES AND FACETIÆ

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The Right to Protect the Flag.

It is a matter for congratulation that the power of the states to legislate against the desecration of the United States flag has now been sustained in the recent decision by the United States Supreme Court in the case of Halter v. Nebraska, Adv. S. U. S. 1906, p. 419, 27 Sup. Ct. Rep. 419. Twice before in these columns decisions to the contrary have been referred to and criticized. A decision by the appellate division of the supreme court in New York, and a decision of the supreme court of Illinois, both denied that it was a proper exercise of the police power to forbid the use of the flag, or a representation thereof, for advertising purposes. The New York court of appeals, however, did not go so far as the appellate division, but held the act invalid because it was made applicable to articles already in existence that had been lawfully manufactured, and also because of certain exemptions which the court held were unreasonably discriminatory. In the Nebraska case a criminal information was brought for violating the state statute by using a representation of the flag of the United States as an advertisement on a bottle of beer. A judgment of conviction was taken to the United States Supreme Court and was there sustained. The contention that the protection of the national flag against illegitimate uses belonged exclusively to the Federal government was overruled. The contention that it was a privilege of American citizenship to use the flag for advertising merchandise was also denied, as well as the claim that to do this was a right of personal liberty under the Constitution. Another contention exclusively made was that the statute invaded property rights without due process of law. An exception made by the statute in favor of newspapers, periodicals, books, pamphlets, etc., on which representations of the flag were printed disconnected from any advertisement, was held reasonable and valid. The court said: "A state will be wanting in care for the well-being of its people if it ignores the fact that they regard the flag as a symbol of their country's power and prestige, and will be impatient if any open disrespect is shown towards it. By the statute in question the state has, in substance, declared that no one subject to its jurisdiction shall use the flag for purposes of trade and traffic,—a purpose wholly foreign to that for which it was provided by the nation. Such a use tends to degrade and cheapen the flag in the estimation of the people, as well as to defeat the object of maintaining it as an emblem

of national power and national honor." The court further said: "It would be going very far to say that the statute in question had no reasonable connection with the common good, and was not promotive of the peace, order, and well-being of the people."

Servant's Nonfeasance as a Crime.

The article in last month's CASE AND COMMENT on servants' liability to strangers for nonfeasance has received striking support in a case just decided in New York city, where a railroad employee was sentenced to five years in prison for being absent from his post of duty as tower man at a critical time, as a result of which a train jumped the track causing the death of several persons and injuries to others. In passing sentence the judge said: "You left your post of duty wherein you had thousands upon thousands of lives intrusted to your care daily, and as a result an unprotected train dashed to their death twelve persons. Railroad accidents due to the negligent and culpable carelessness of railroad officials and employees are becoming too common. The blame can seldom be brought home to the individual, as in your case; and I feel it my duty, no matter how much I may sympathize with you, to punish you as a warning to others similarly situated." The negligence of the tower man in this case was in failing to perform his duty in an emergency. It was obviously mere nonfeasance. The duty that he neglected was not merely a duty to his employers, but was a duty to the persons whose lives were put in jeopardy and who were killed or injured by his nonfeasance. The crime for which he was sentenced was not for his neglect of his contract duty to his employer, but for his neglect of duty toward those strangers to the contract whose lives were in his hands by virtue of his employment. If his mere nonaction could not constitute neglect of duty to anyone but his master, such neglect could not constitute a crime.

As Others See Us.

The following is taken from a letter received by a friend in Rochester, New York, from a very bright lawyer in Scotland who has had long experience in criminal law. He compares American and Scottish trials with particular reference to the Thaw Case as follows:

"It is a great case, but not nearly so great as your American methods of procedure. Here the Crown case is heard right away. Both parties have to show their hands a week before the trial by lodging final lists of witnesses. No new ones are allowed to go into the box. Then the case goes on for the Crown in an orderly, straightforward manner. When the prosecution is done, rebutting evidence cannot be introduced. Then the defense comes along on the same lines. Here the judge goes into all the facts as well as the law. With you, as I understand, the jury are sole judges of the facts, and are left to their own reflections after the counsel have spoken and the judge has delivered his charge. Speaking as one who has had many criminal cases through his hands, I am firmly convinced that our methods of straight fighting are superior to your elaborate system. You make too much of the counsel. It is really Jerome's and Delmas's acts that are on trial, with Thaw's future as a kind of by-product of the experiment. This, I think, is wrong. It is the facts that are great or little, and the more room you leave for diplomacy and tactics the more you swell the lawyers' heads and belittle the law. On the other hand, your system of summing up seems to me far superior to ours. Our judges, especially some of our local sheriffs (similar to judges of minor courts in America), go far too much into the facts, and, putting themselves in the jury's place, practically dictate the verdict. Of course, strong-minded jurors sometimes take their own course in spite of this dictation. I'm a loyal Briton in most things, but I often long for your American summing-up methods. As for the rest of your system, to the devil with it, for a cumbersome device for wasting decent men's time and swelling lawyers' heads."

Absurd Length of Trials.

No expense of time or money is too great to insure justice to an accused person, but

the view of a foreigner above quoted, to the effect that our conspicuous and spectacular trials "swell the lawyer's heads and belittle the law," is shared by an increasing number of Americans. It is doubtful if many judges or lawyers actually believe that a well-nigh interminable duel between opposing lawyers or between lawyers and expert witnesses is an aid to justice. Especially when an accused has great wealth and is able to carry on an indefinite contest running through weeks and months, the question arises whether justice can be served and saved without permitting the duration of the trial to be limited by nothing except the wishes of counsel and the purse of the client. It is not simply a question of enormous cost to the public; it is a question of practically monopolizing the court, to the exclusion of other important business, for an indefinite period. To say that there is no remedy for these abuses is to admit a very glaring defect in our system of justice. Many times it is obvious that the real purpose of the prolonged struggle is not to secure, but to defeat, justice. Still the courts seem powerless to interfere. There should be no clamor, indeed, for any procedure that would deny justice, but the question is pressing hard upon us whether or not there is any way of securing justice except by the present practice of letting the trial go on as long as counsel desire to drag it. The interminable length of many trials comes dangerously near being a burlesque and a scandal.

Issue of Insanity of Accused Person.

One of the sources of delay, which is also many times a device to escape justice, is an issue of insanity. It has long been within the discretion of the trial court, as was done in the Thaw case, to make a preliminary issue as to the insanity of the accused at the time of the trial. The court could determine this issue by inspection of the defendant, by a quasi commission in the nature of one *de lunatico inquirendo*, or by submitting the issue to a jury impaneled for that purpose. Wharton & Stille's Medical Jurisprudence (2d ed.) Vol. I., § 208. This special issue could also be tried with the jury impaneled for the trial of the indictment. If as a result of this inquest the defendant is found sane, the criminal trial proceeds; but such finding of sanity at the time of the trial cannot be considered in determining the defense in the criminal proceeding of insanity at the time of the alleged offense. But in most of the states, as well as in England and Canada, there are statutes providing that in case of an acquittal because of insanity existing at the time the offense was committed there may be a commitment of the prisoner to confinement in an asylum or other proper place, if his discharge appears dangerous to the public peace or safety. In Ex parte Brown, 39 Wash. 160, 1 L.R.A.(N.S.) 540, 109 Am. St. Rep. 868, 81 Pac. 552, a sentence under such a statute was attacked on the ground that it denied the accused due process of law and the benefit of the constitutional right to appear and defend and to trial by jury. But it was held that, as he had had a fair trial upon the issue of insanity tendered by him in support of his plea of not guilty and had produced no evidence of a return of a lucid interval, his rights were not violated. Subsequently a writ of habeas corpus was obtained from a Federal court and the accused obtained his discharge, but on appeal to the Supreme Court of the United States it was held that he was not entitled to any remedy by habeas corpus in such case, and that, if the state court had denied him his constitutional rights by its sentence, his remedy was by writ of error from that court. The authorities on the subject of confinement of one acquitted of crime by reason of insanity are fully reviewed in a note to Ex parte Brown in 1 L.R.A.(N.S.) 540. This shows that confinement after acquittal for insanity is in accordance with the decisions of various jurisdictions, but it is a necessary condition that the continuance of the insanity at the time of the acquittal shall be judicially found, though it does not seem necessary that it should be done by jury. In some states the statutes authorize confinement in prison, and this provision does not seem to have been held improper in any case.

Statutes of this kind ought to be in force everywhere and thoroughly enforced. Insanity as a defense is much less attractive to an accused person if it is likely to land him in a prison or in an asylum if it succeeds. Of course, there is a chance of showing that the accused had become sane before trial, but attempting this is usually skating on

thin ice. It should obviously be made the duty of the jury, if their acquittal is based on the ground of insanity, to make a finding to that effect, so as to present a basis on which the court can act in committing the accused to confinement.

A Publicity League.

A league which will make it its business to throw the light of publicity on proposed laws, especially those of the kind that have a concealed purpose, is one form of what was called "government by private citizens" in the November issue of CASE AND COMMENT, which pointed out that an organization of good citizens "composing what may be called a vigilance committee, with no ends to serve except the public welfare, is the reserve power of government by the people when their nominal representatives misrepresent them."

Some legislators have been offended at the suggestion of such an organization, regarding it as an imputation of dishonesty on their part. While it is not a reflection upon the honest members, it certainly is not complimentary to the legislature as a whole to be systematically watched; but the need of such work has been too fully demonstrated to make objection to it reasonable. A member of the legislature who finds himself inclined to be indignant over such a movement may well look at the matter in the light of the following words clipped from a prominent journal: "Once in a while legislators, and more frequently the public, find that an apparently innocent and trivial bill has become a law, and is in fact a most important, and perhaps objectionable, measure. The presumption is that any bill which is greased so as to slide through easily is objectionable. It has been the particular business of nobody to look out for such things. It is no light task, and most legislators have business of their own to take care of. To make this work the business of somebody is the aim of the publicity league now forming at Albany, and anybody who is disposed to object to it must have curious reasons for it."

Suggestions as to Limits of the Treaty Power.

Commenting on recent articles in CASE AND COMMENT respecting the treaty-making power, a California lawyer of much ability writes in support of the contention that the treaty-making power can do nothing that the legislative branch of the government cannot do; that is, "that the treaty-making power is limited in its scope to the execution of those powers granted by the Constitution." He argues that, as the treaty-making power is committed to a part only of the lawmaking body, it is not to be supposed that a part should have greater powers than the whole; that is, that the President and the Senate can do in the form of a treaty what the President and both Houses of Congress together cannot do by legislation. He says: "If the treaty-making power is not determined by these principles, it will have no limitation; and the President and Senate may go on and, in the form of treaties, legislate upon every subject not comprehended in the power delegated to Congress by the Constitution. The maintenance of such a principle would obliterate the states and their reserved powers; would wholly supersede the House of Representatives; and would subordinate to the treaty power the whole Constitution."

The cases referred to in former articles in which treaties giving to aliens the power to inherit real property in the states were upheld, though the state laws were to the contrary, seem to be directly opposed to the argument that the treaty-making power is limited to the scope of the legislative power of Congress; since it is clear that Congress cannot legislate as to the inheritance of real property within a state, while the decisions of our highest court have, from an early day, established the power to do this by a Federal treaty, in case of aliens. The apparent force of these decisions against his position is met by the contention that this grant to aliens of the right to take real property within the states by purchase or inheritance is within the scope of the power of Congress, under the Constitution, "to regulate commerce with foreign nations;" and he says that the power to regulate commerce is held to include the power to regulate the buying, selling, and dealing in commodities and of business intercourse, which, he says,

would seem to include real estate as well as personal property. But the contention that the power of Congress to regulate commerce includes the power to regulate the buying and selling of land, and the right to inherit it, seems to be effectively denied by the Federal decisions on the question.

In United States v. Fox, 94 U. S. 315, 24 L. ed. 192, which was a case of the devise of property to the Federal government, held void under the state laws, the court said:

"The title and modes of disposition of real property within the state, whether *inter vivos* or testamentary, are not matters placed under the control of Federal authority." While this language was not used with express reference to any contention as to the commerce clause, it is in harmony with all the decisions of the Supreme Court from the beginning. It may be that this court has never expressly declared that the purchase, sale, or inheritance of real estate is or is not commerce; but there does not seem to be much room to contend for the affirmative, in the light of all the decisions as to what is included under that term. All seem to show that nothing constitutes foreign or interstate commerce which does not involve some element of traffic, intercourse, transportation, or exchange of commodities between different states or nations. The right of aliens or nonresidents as to buying or selling property within a state, when it is not bought or sold for the purpose of, or in connection with, traffic between different states or nations, does not seem to come within any of the definitions of interstate or foreign commerce. Buying or selling, or any other business that is confined entirely within a state and is not an incident of interstate or foreign business, does not come within the power of Congress to regulate commerce, though it may come within treaty provisions as to the privileges of aliens, or constitutional provisions as to the equal rights or privileges of citizens of the United States. The fact that one party to a local transaction may be an alien or nonresident certainly does not of itself give the business any interstate or foreign character.

It does not seem possible, therefore, to dispose of the cases as to treaty rights of aliens to inherit, on the theory that such right is an incident of commerce which is subject to regulation by Congress. If that is not so, the claim that the treaty-making power is limited to matters on which Congress can legislate would appear to be negatived by those decisions.

It is also argued that "the power to determine what aliens may be admitted, what commerce shall be carried on, and by what means, must necessarily include the right to determine what may be acquired, bought, and sold while in this country." But the power to admit aliens, and the power to admit commerce, taken together, amount to no more than the sum of the two powers. That over commerce is insufficient to include the inheritance and other disposal of real property within a state, while the power of Congress to admit aliens does not seem to include the power to confer on them the right to inherit, buy, or sell real property within a state, unless on the theory that the power to admit them includes the implied power to fix their status, rights, and privileges in the various states. This would certainly be a very strong exercise of the doctrine of implied powers, and any attempt of Congress to exercise it would doubtless be met with strenuous objection. However, if such theory were to be adopted, there would no longer be much room to deny the power to regulate the same matters by treaty, as the whole basis of the objection to the latter is that it goes beyond the proper exercise of Federal authority in the affairs of the states.

The whole subject of the extent of the treaty-making power has been so little developed in judicial decisions that it is not well to adopt conclusions on the subject hastily or too positively. The decisions sustaining the treaty rights of aliens to inherit real estate notwithstanding state laws to the contrary do not seem reconcilable with the theory that the treaty-making power is limited to those matters which are, by the Constitution, within the scope of the lawmaking power of the Federal government. If not, is there any other limit of the treaty-making power in the determination of international questions? As the Constitution has not expressly limited the power, it may be argued that the intention was to give the Federal government the same power that other nations have in determining similar questions. This seems very vague, and possibly inconsistent with the care exercised in some other parts of the Constitution in limiting Federal authority.

On the other hand, can it be presumed that the intention was to leave it possible for any state to create international complications by denying to aliens any rights or privileges within its territory, except those which can be conferred upon them by act of Congress? Either alternative may be unsatisfactory. But it is not easy to find a limit between these two extremes.

"Legalizing" the Liquor Traffic.

A correspondent takes issue with the article in CASE AND COMMENT for March, on the legislative power to license saloons. He quotes from the opinion of Mr. Justice Field in Crowley v. Christensen, 137 U. S. 86, 34 L. ed. 620, that "there is no inherent right in a citizen to sell intoxicating liquors by retail," and similar statements from other cases. But the Supreme Court decision in which that declaration was made, so far from holding that a license law is unconstitutional, explicitly sustains its constitutionality against an attack by a saloon keeper. Obviously what the court meant was that a citizen had no inherent right to sell intoxicating liquor in the face of a statute to the contrary. It could not mean that he had no right to make such sale in conformity to the statute, because the court unmistakably assumed that he could sell in compliance with the statute, but held that he could not do it in defiance of the statute, and that the license law was constitutional.

It is certainly strange that so many people seem to have accepted, without question, the oft-repeated cry that the liquor traffic cannot be "legalized" without sin, or that it cannot be "legalized" at all under the Constitution. That the traffic is legal, except so far as there are enactments to restrict it, is certainly the law of this country, as it has always been the law of our parent country. If the restrictive laws were taken off the statute books the traffic would not be unlawful, but would be free. This is unmistakable. It is one thing to say that the people ought to prohibit the sale by constitutional or legislative enactment, but it is quite another thing and entirely contrary to the law of the country to say that there is no need of any constitutional or legislative enactment to make the traffic illegal. From the beginning of the common law until the present day sales of intoxicating liquors have been lawful, except as they were made unlawful by positive enactment. To hold, therefore, that the legislature cannot constitutionally pass a law by which the traffic is restricted to those who are licensed is, in effect, to hold that there can be no restriction of the traffic whatever, unless it comes in the form of absolute prohibition. Whether such a situation would be welcome to thoughtful citizens or not, it would certainly require an overthrow of the whole line of our judicial decisions on this subject. But a test of the situation is to ask on what basis a court could sentence a man for the alleged offense of selling intoxicating liquors if there were no constitutional or statutory provisions making the sale unlawful. Is there any court that would sentence a man under a prosecution for the alleged crime of making a sale of intoxicating liquors if there were no statutes on the subject?

Index to New Notes IN LAWYERS REPORTS ANNOTATED 6 L.R.A.(N.S.) pages 49—432.

Among the New Decisions.

Action. See TRUSTS.

Agency. Failure on the part of a principal to dissent from or repudiate an unauthorized act of his agent within a reasonable time is held, in Thompson v. Laboring man's Mercantile & Mfg. Co. (W. Va.) 6 L.R.A.(N.S.) 311, to be evidence of ratification of the unauthorized act.

The fraud of an agent is held, in Armstrong v. Ashley, Advance Sheets, U. S. (1906) page 270, not to alter the legal effect of his knowledge with respect to his principal, in regard to third parties who had no connection whatever with such agent in relation to the perpetration of the fraud, and no knowledge that any such fraud had been perpetrated.

Assault. See HUSBAND AND WIFE.

Attachment. See BENEFIT SOCIETIES.

Banks. The pledgee of national-bank stock as collateral security for a note, with power of public or private sale for the liquidation of the pledge, is held, in Ohio Valley Nat. Bank v. Hulitt, Advance Sheets, U. S. (1906) 179, to become the beneficial owner of the stock, and as such subject to the liability of a stockholder, under the United States Revised Statutes, where, after the death of the pledgeor, it causes the stock to be registered in the name of an employee with no beneficial interest, and afterwards indorses upon the note the supposed value of the stock as of the date of the credit, and presents the note, as reduced by the amount of such valuation, to the pledgeor's administrator, who allows the claim in this form.

Benefit societies. Funds arising from assessments upon the members of a mutual benefit society, to be used exclusively for the payment of claims of widows and orphans, under the rules of the society, are held, in Brenizer v. Supreme Council (N. C.) 6 L.R.A.(N.S.) 235, not to be subject to attachment in the hands of a collector of a subordinate lodge for a general debt of the society.

Brokers. A broker who finds a person who takes an option upon the purchase of certain mining property, which is never carried out, is held, in Crowe v. Trickey, Advance Sheets, U. S. (1906) 275, to have no right, where the owner dies before the option expires, to recover his agreed commission from the administrator, when the latter, after the expiration of the option, sells the property to the same person and at the same price.

Carriers. The shipping over a railroad of the products of a mill is held, in Hilton Lumber Co. v. Atlantic Coast Line R. Co. (N. C.) 6 L.R.A.(N.S.) 225, not to justify a discriminatory rate in favor of the logs shipped to the mill from which the product is made.

That a carrier may be estopped, even as against a bona fide holder for value, to deny the validity of a bill of lading issued by its agent, on the ground that the goods were never delivered to it for shipment, is denied

in Roy & Roy v. Northern P. R. Co. (Wash.) 6 L.R.A.(N.S.) 302.

Charities. A trust fund created for the propagation of the religious belief of a particular sect is held, in Com. ex rel. Albritton v. Thomas (Ky.) 6 L.R.A.(N.S.) 320, not to be exempt from taxation under a clause of the Constitution exempting "purely public charities," where the same section specifies the religious property that shall be exempt, and other sections absolve citizens from contributing to the support of any religious sect, and provide that no money raised for educational purposes shall be used in aid of any church.

Conflict of laws. In Root v. Kansas City S. R. Co. (Mo.) 6 L.R.A.(N.S.) 212, it is held that the courts of a state in which a section foreman on a railroad is held not to be a fellow servant of a brakeman will not, in determining the liability of a railroad company for injury to a brakeman through the negligence of a foreman in another state, assume that the courts of the latter would hold that they were fellow servants, merely because its decisions had tended in that direction, but, in the absence of direct decision, will establish their own rule.

Constitutional law. A statute prescribing punishment for violation of a regulation of the state board of health is held, in Pierce v. Doolittle (Iowa) 6 L.R.A.(N.S.) 143, not to be unconstitutional, on the theory that legislative power to create crimes is thereby delegated to such board.

Forbidding the keeping for sale, for tippling purposes, or for a beverage, of cider which is in fact unfermented and nonintoxicating, is held, in State v. Frederickson (Me.) 6 L.R.A.(N.S.) 186, not to violate the constitutional rights of the owner.

A statute making the owner of premises liable for water and light furnished by a municipality to a tenant is held, in East Grand Forks v. Luck (Minn.) 6 L.R.A.(N.S.) 198, not to be unconstitutional as a taking of property without due process of law, or as causing one person to pay for the debts of another.

Due process of law is held, in Ballard v. Hunter, Advance Sheets, U. S. (1906) 261, not to require that the nonresident owners of land within a levee district should have personal notice of the pendency of a suit to collect the levee tax assessed upon their lands.

An owner of sheep is held, in Bacon v. Walker, Advance Sheets, U. S. (1906) 289, not to be deprived of his property without due process of law by a statute allowing damages to be recovered from him for permitting his sheep to graze on the public domain, within 2 miles of a dwelling house.

The contract right to do business in the state during the corporate lifetime of domestic corporations without being subject to any greater liabilities than then were or might be imposed upon domestic corporations, which was acquired by a foreign corporation by virtue of its admission into the state of Colorado, with the right to do business therein under the then existing laws of that state, which subjected such foreign corporations to the liabilities and duties imposed upon domestic corporations, is held, in American Smelting & R. Co. v. Colorado ex rel. Lindsley, Advance Sheets, U. S. (1906) 198, to be unconstitutionally impaired by a statute exacting from such foreign corporations an annual tax or license fee in double the amount of that imposed upon domestic corporations.

A statute conferring upon the owners of water powers operating, or preparing to operate, thereon a plant or works for generating electricity to be used for the purpose of lighting towns or cities, or to supply motive power to railroads or street-car lines, or to supply light, heat, or power to the public, authority to exercise the right of eminent domain, is held, in Jones v. North Georgia Electric Co. (Ga.) 6 L.R.A.(N.S.) 122, not to be unconstitutional as a taking of property without due process of law.

See also PANAMA CANAL; STREET RAILWAYS.

Contracts. See SPECIFIC PERFORMANCE.

Corporations. See BANKS; CONSTITUTIONAL LAW.

Easements. A ditch constructed by the landowner to relieve a portion of his land of surface water and convey it to another portion, where it is valuable for irrigation purposes, which is plainly visible upon the ground at the time he sells the latter portion, is held, in Fayter v. North (Utah) 6 L.R.A.(N. S.) 410, to pass, together with the water flowing thereon, under the words "privileges and appurtenances," in the deed.

Electricity. A volunteer who, having been warned of the danger of approaching a broken electric wire which he knows to be uninsulated and to carry a current for lighting purposes, and to have shocked another into

insensibility, approaches the wire for the purpose of determining whether or not it is still alive, is held, in Carroll v. Grande Ronde Electric Co. (Or.) 6 L.R.A.(N.S.) 290, to be guilty of such negligence that no recovery can be had for his death, in case he places his hand within the danger zone, and a shock from the wire kills him.

Eminent domain. See CONSTITUTIONAL LAW.

Evidence. A report made to the claim agent of a street railway company by the conductor and motorman of an electric car, of an accident in which a passenger was injured, which was made pursuant to a standing rule of the company for the information of the claim agent, as a basis for settlement or for use of counsel in case of suit against the company, is held, in Re Schoepf (Ohio) 6 L.R.A.(N.S.) 325, to be a privileged communication, the production of which cannot be enforced in the taking of depositions before the trial in a suit against the company for injury received in such accident.

Fire. See WATERS.

Fisheries. One who, under an oyster law providing for the granting of rights to plant oysters subject to those already existing, secures from the state a lease of land to be planted with oysters, adjoining property which has been devoted by a corporation, under its charter authority, to shipbuilding purposes, is held, in Newport News Shipbuilding & D. D. Co. v. Jones (Va.) 6 L.R.A. (N.S.) 247, to take subject to the right of the corporation to do the dredging necessary to render its property available for its charter purposes.

Fraud. A bank cashier is held, in State v. Miller (Or.) 6 L.R.A.(N.S.) 365, not to be guilty of obtaining property by means of a privy or false token by drawing and certifying a check on the bank which he exchanges for the property, if at the time he states to the seller that the check is not collectible because the bank has not funds enough on hand to pay it, since the seller cannot be regarded as having relied on the token as valid.

Failure of one solicited to purchase stock in a corporation to investigate the truth of representations as to its standing is held, in State v. Keys (Mo.) 6 L.R.A.(N.S.) 369, not to protect the one who effects the sale by false and fraudulent representations concerning it from a prosecution for obtaining money by false pretenses, provided the representations are not absurd or irrational, or such as are not calculated to deceive the party to whom they are made.

See also AGENCY; PARTNERSHIP.

Health. See CONSTITUTIONAL LAW.

Hospitals. See NEGLIGENCE.

Husband and wife. The right of a woman, even after divorce, to maintain an action against her former husband for an assault committed upon her during coverture is denied in Strom v. Strom (Minn.) 6 L. R.A.(N.S.) 191, under a statute preserving the legal personality of a woman after marriage, and giving her the same right of action for injuries sustained to her person in her own name that her husband has for injuries to him.

An agreement by a man to invest the separate property of his wife in the purchase of land is held, in Sparks v. Taylor (Tex.) 6 L.R.A.(N.S.) 381, to make him a trustee of the land for her benefit to the extent of the money so invested.

Infants. See RAILROADS.

Insurance. The right of a person to procure insurance on his own life and assign the policy to another who has no insurable interest in the life insured is sustained in Rylander v. Allen (Ga.) 6 L.R.A.(N.S.) 128, provided it be not done by way of cover for a wager policy.

See also CORPORATIONS.

Intoxicating liquors. See CONSTITUTIONAL LAW.

Landlord and tenant. The purchase of leased property at a tax sale is held, in Carlson v. Curran (Wash.) 6 L.R.A.(N.S.) 260, not to create the relation of landlord and tenant between the purchaser and the lessee.

See also CONSTITUTIONAL LAW.

Lateral support. Negligence in making an excavation on one's property, or in leaving it exposed for an unreasonable time before putting in retaining walls, is held, in Hannicker v. Lepper (S. D.) 6 L.R.A.(N.S.) 243, to render him liable for injuries to buildings on adjoining property through the caving in of the embankments.

License. A parol license without consideration to turn water upon property of the licensor is held, in Jones v. Stover (Iowa) 6 L.R.A.(N.S.) 154, to be revocable at his pleasure, notwithstanding expense incurred by the licensee in executing it.

Mails. One who causes obscene matter written by him to be printed in a newspaper, intending thereby to bring it to the attention of the readers of the paper, and knowing at the time that the regular mode of transmitting the paper to its readers is by the use of the mails, is held, in Demolli v. United States (C. C. A. 8th C.) 6 L.R.A.(N.S.) 424, knowingly to cause the objectionable matter to be deposited in the mails, within the meaning of the United States Revised Statutes, when in such regular course the paper, with the objectionable matter printed therein, is deposited in the postoffice for mailing and delivery.

Master and servant. The immediate bringing of an action by a servant wrongfully discharged during the term for which he was engaged is held, in Howay v. Going-Northrup Co. (Wash.) 6 L.R.A.(N.S.) 49, not to prevent a recovery for the whole unexpired term, if the trial does not take place until the term has expired.

The doctrine *res ipsa loquitur* is held, in Fitzgerald v. Southern R. Co. (N. C.) 6 L.R.A.(N.S.) 337, to apply where one employed in caring for a locomotive is injured by a heavy lump of coal falling in the process of transferring it from an adjoining car to the tender of the locomotive.

See also CONFLICT OF LAWS.

Negligence. The liability of the proprietor of a private sanitarium for negligence of a nurse, causing injury or suffering to a patient, is sustained in Stanley v. Schumpert (La.) 6 L.R.A.(N.S.) 306.

The owner of a house on a private way used by occupants of adjoining houses to gain access to the street is held, in Cavanagh v. Block (Mass.) 6 L.R.A.(N.S.) 310, to be under obligation not to construct his gutters in such a manner that they will create a dangerous accumulation of ice in the way.

See also CONFLICT OF LAWS; ELECTRICITY.

Panama canal. The power of Congress to construct the Panama canal in the territory acquired by the treaty of November 18, 1903, with the Republic of Panama, is sustained in Wilson v. Shaw, Advance Sheets, U. S. (1906) 233.

Partnership. Where one partner, having charge of the business and books of a firm, by making material, false, and fraudulent representations to the effect that certain items of charge against others constituted debts owing to the firm, when in fact some of the items had been collected by him, and others were false charges, induced the other partner to enter into a contract finally settling and dissolving the partnership, whereby the latter took over for value as his individual property all of such items of charge, it is held, in Crockett v. Burleson (W. Va.) 6 L.R.A.(N.S.) 263, that the latter may, upon discovery of the fraud, without rescinding the contract, sue the former at law for any damages occasioned by the deceit.

Perpetuities. The rule against perpetuities is held, in Robinson v. Harris (S. C.) 6 L.R.A.(N.S.) 330, to prevent children born after the death of testator from taking an interest in an estate under a will giving it to a certain person and his children for life, since the possibility of the birth of children after the expiration of twenty-one years prevents children born within that time from sharing in the estate.

Pledge. See TROVER.

Postoffice. See MAILS.

Principal and agent. See AGENCY.

Railroads. That it is not negligence, as matter of law, for one approaching a bridge crossing a railroad track to fail to stop, look, and listen, is held, in Heinmiller v. Winston (Iowa) 6 L.R.A.(N.S.) 150.

Personal discomfort to neighboring property owners because of the location and operation, without negligence, of railroad tracks, depots, and side tracks under legislative authority is held, in St. Louis, S. F. & T. R. Co. v. Shaw (Tex.) 6 L.R.A.(N.S.) 245, to give them no right of action against the railroad company.

The right of persons in charge of a railway train to presume that a child on the track will appreciate the danger and get out of the way of the train is denied in Southern R. Co. v. Chatham (Ga.) 6 L.R.A.(N.S.) 283.

Sale. A guaranty that machinery sold will be suitable for its intended use is held, in Lombard Water Wheel G. Co. v. Great Northern Paper Co. (Me.) 6 L.R.A.(N.S.) 180, to be negatived by the fact that it is such as the seller, in the usual course of his business, manufactures for the general market, and that the contract contains certain guaranties which, by legal construction, exclude all others.

Under a contract by which articles are delivered to an intending purchaser, with

the understanding that, if he is pleased, he will keep and pay for them, but, if not pleased, he will return them within a reasonable time, it is held, in Gottlieb v. Rinaldo (Ark.) 6 L.R.A.(N.S.) 273, that the title does not pass, and that any loss or damage from any cause, except through negligence of the purchaser, rests upon the seller.

Specific performance. One who has contracted for sewer service from a corporation maintaining a public sewer, without binding himself to utilize the service for any specified time, is held, in Solomon v. Wilmington Sewerage Co. (N. C.) 6 L.R.A.(N. S.) 391, to have no right to enforce specific performance against the company for the term of its statutory existence, for lack of mutuality.

That the purchaser does not sign the memorandum of agreement for a sale of real estate is held, in Western Timber Co. v. Kalama River Lumber Co. (Wash.) 6 L.R.A.(N.S.) 397, not to prevent specific performance in his favor.

Where an option has been given upon land, which has not been converted into a binding contract by acceptance in accordance with its provisions, it is held, in Pollock v. Brookover (W. Va.) 6 L.R.A. (N.S.) 403, that specific performance thereof cannot be enforced.

Street railways. The title to the rails, poles, and other appliances for operating a branch of a street-railway system remaining in the streets at the expiration of its franchise is held, in Cleveland Electric R. Co. v. Cleveland, Advance Sheets, U. S. (1906) 202, to be in the railway company which has been operating the road; and the power of the municipality to confer upon another street railway company the right to take possession of such property is denied.

Taxes. The tax on transfers of corporate stock imposed by N. Y. Laws 1905, chap. 241, is held, in New York ex rel. Hatch v. Reardon, Advance Sheets, U. S. (1906) 188, not to be invalid as an arbitrary discrimination in favor of sales of other kinds of personal property, such as corporate bonds.

Trover. Tender of the amount due is held, in Austin v. Vanderbilt (Or.) 6 L.R. A.(N.S.) 298, not to be necessary to enable the pledgeor to maintain trover in case the pledgee wrongfully sells the property to a stranger.

Trusts. A statutory provision permitting trustees of an express trust to sue without joining the *cestui que trust* is held, in Mitau v. Roddan (Cal.) 6 L.R.A.(N.S.) 275, not to apply in case of an attempted foreclosure of a deed of trust given to secure the claims of different parties to determine in whose interest an accounting is necessary.

See also HUSBAND AND WIFE.

Waters. The right of a property owner to erect a barrier to protect his land from water which has been diverted from a creek by a cut and abandoned to find its way to a natural outlet as best it may is sustained in Wills v. Babb (Ill.) 6 L.R.A. (N.S.) 136.

The owner of the servient estate is held, in Pohlman v. Chicago, M. & St. P. R. Co. (Iowa) 6 L.R.A.(N.S.) 146, not to be liable for hastening the flow of surface water therefrom, although it results in the wearing of ditches in the dominant estate.

Where water runs in a well-defined channel, with bed and banks, made by the force of the water, and has a permanent source of supply, it is held, in Rait v. Furrow (Kan.) 6 L.R.A.(N.S.) 157, that it is to be regarded as a natural water course, although the stream may be small, its course short, and it may have existed for only a short time.

An owner of land bounded by a navigable stream is held, in Fowler v. Wood (Kan.) 6 L.R.A.(N.S.) 162, to have the right to protect his soil against the inroads of the water, to secure accretions which form against his bank, and to erect and maintain improvements necessary to promote commerce, navigation, fishing, and other uses of the river as navigable water, but to have no right, by obstructions placed across the main current, to deflect the stream itself into a new channel.

One erecting fences and culverts across a stream is held, in American Locomotive Co. v. Hoffman (Va.) 6 L.R.A.(N.S.) 252, not to be liable for injuries to an upper riparian proprietor because they are not sufficient to pass an extraordinary flood due to the giving way of a dam, or to an unprecedented rainfall.

That the water of a navigable lake cannot be withdrawn below the original low-water mark for irrigation purposes, to the injury of a riparian owner who acquired

his rights prior to the adoption of the constitutional provision vesting title to the navigable waters in the state, is declared in Madson v. Spokane Valley L. & W. Co. (Wash.) 6 L.R.A.(N.S.) 257.

The owner of land who explores for and produces subterranean percolating water within the boundary of his land is held, in Pence v. Carney (W. Va.) 6 L.R.A.(N.S.) 266, to be limited to make reasonable and beneficial use of such water, when to use it otherwise would deplete the water supply of a valuable natural spring of another on adjoining or neighboring land, and thereby materially injure or destroy such spring.

The right of a property owner to hold a water-supply company liable for loss of his property by fire because of its breach of its contract with the municipality to supply water for fire purposes is denied in Lovejoy v. Bessemer Waterworks Co. (Ala.) 6 L.R.A.(N.S.) 429.

See also LICENSE.

Wills. Where a will makes inadequate provision for a helpless child without property, and there is evidence of undue influence, it is held, in Meier v. Buchter (Mo.) 6 L.R.A.(N.S.) 202, that the court cannot force a verdict to sustain the will in favor of other children happily circumstanced, and that the question of the validity of the will should be submitted to the jury.

New Books.

Loveland on "Bankruptcy," 3d ed. (W. H. Anderson & Co., Cincinnati, 1907.) 1 Vol. $6.30.

This well-known treatise on bankruptcy has been practically rewritten to bring into it, in logical order, the numerous late decisions. This work has been in general use and much cited by the courts. The new edition, incorporating more than two thousand additional cases, practically supersedes the former addition.

"Rules of Order for Societies, Conventions, Public Meetings, and Legislative Bodies." By Charles M. Scanlon. 2d ed. (Reig Pub. Co., Milwaukee, Wis.) 1 Vol. 50 cts.

This convenient little book on parliamentary rules is given additional value by its annotations referring to decisions of the courts in support of various rules in the text. This is an important feature.

"The Law of Taxation by Special Assessments," by Charles H. Hamilton, Chicago. (George I. Jones, 1907.) 1 Vol. Buckram, $7.50 delivered.

The subject of "special assessments" has become a large one. It is also one on which some of the courts are still entangled in erroneous precedents. The present volume is a valuable contribution to the subject. No one who has a puzzling question as to assessments should fail to consult the book.

"Law and Practice for Justices of the Peace and Police Justices in the State of New York." By Patrick C. Dugan. 2 vols. canvas, $6.50.

"The Law of Insurance." By C. Burke Elliott. Buckram, $4 net.

"The Municipal Court Act." (Chicago.) By Hiram T. Gilbert. Buckram, $2.

"Liquor Laws of Pennsylvania." By Llewellyn F. Hess and W. Alfred Valentine. Buckram, $2.

"Outlines of Criminal Law." By Courtney S. Kenny. Revised and adapted for American scholars, by J. H. Webb. $3.

"Supplement of the Revised Laws of Massachusetts, 1902–1906." By J. H. Peck. $5.

"Mining Law in Practice." By G. Washington Miller. Cloth, $2.

"Code of Ordinances of New York City," 1906. Cloth, $1.50.

"Consolidated Index-Digest of New York Civil Procedure Reports, Vols. 1–35." Sheep, $4.

"New York Civil Procedure Reports." Vols. 34 to 36. Reported by Percival S. Menken. $2.50 per vol.

"New York Code Citations." Paper, $1.

"North Carolina Digest." Vols. 1–133. By T. B. Womack. Vol. 4. $5.

"Business and Law." By E. T. Roe, Elihu G. Loomis, and others. Cloth, $1.75.

"The Principles of German Civil Law." By Ernest J. Schuster. Cloth, $4.15.

"Practice in the United States Patent Office." A table of cases construing and defining the several rules of practice and of cases subsequently cited. By Elliott J. Stoddard. Buckram, $2.

"Annotations on Tennessee Decisions." With table of cases and citations. By Robert T. Shannon. Vol. 4. $8.

"Encyclopædic Digest of Virginia and West Virginia Reports." Vols. 1–103, Virginia Reports. Vols. 1–55, West Virginia Reports. Under supervision of T. Johnson Michie. Vol. 8. $7.50.

"Colorado Supplement Digest, 1900–1906." By J. Warner Mills. Vol. 3. $10 net.

"A Manual of Maine Corporation Law." By Herbert M. Heath. Buckram, $3.

"Modern Business Law." Cloth, 90 cts.

"General Laws and Other General Statutes of New York, 1902–1906." By Robert C. Cumming and Frank B. Gilbert. Vol. 4. $7.50. Complete work, 4 vols. $27.

"Ohio Township Officers' Guide." By Hiram D. Peck. 13th ed. Buckram, $3.50.

"Laws of Business for the United States and Canada." By Theophilus Parsons. New ed. Buckram, $3.50.

"Virginia Corporation Digest." By I. Diggs and Ben T. Barret. $7.50.

"The Citator." Wisconsin edition. $5.

"Notes on California Supreme Court Reports." By C. T. Boone, W. Foster, Joseph A. Joyce, and A. Raymond. Revised to include Vol. 147, by C. L. Thompson. 5 vols. Buckram, $40.

"Constitution of California." Annotated by E. F. Treadwell. 2d ed. Buckram, $4.

"State Documents on Federal Relations." By Herman V. Ames. Cloth, $1.75.

"American Legislatures and Legislative Methods." By Paul S. Reinsch. Cloth, $1.25.

"The Liquor Laws of Pennsylvania." By Robert A. B. Hausman. Cloth, $2.

Laning's "Revised Statutes of Ohio, Supplement." Sheep, $1.

"A Digest of New York Statutes and Reports from January 1, 1906, to January 1, 1907." Being a continuation of Abbott's New York Digest. By James M. Smith. $5.

Laning's "Revised Statutes and Recodified Laws of Ohio, 1906." Revised to 1908. $12.

"Township Manual for North Dakota." By Walter S. Booth. 9th ed. Paper, 75 cts.

"A Guide to Magistrates and Constables." By J. Garland Pollard and Christopher B. Garnett. With guide to notaries public, by Carroll G. Walter. Cloth, $5.

"Illinois Probate Practice and Law of Estates." By Franklin P. Simons. 2 vols. $12.

"Illinois Session Laws." 45th General Assembly, 1907. $2 net.

Collier on "Bankruptcy." 6th ed. Buckram, $6.50.

"Crime, Habit, or Disease?" A question of sex from the standpoint of psychopathology. By William Held. Cloth, $1.50.

"Regulation of Commerce." By Thomas H. Calvert. Cloth, $3.

"Rules of the New York Court of Appeals." Annotated edition. By Edmund H. Smith. Buckram, $3.

"Mining Laws." By Calvert Wilson. 50 cts.

Recent Articles in Law Journals and Reviews.

"The Jurisdiction and Practice under the Act of Congress, Approved June 11, 1906, Relating to the Liability of Common Carriers to Their Employees."—12 Virginia Law Register, 866.

"Monopoly and the Law."—19 Green Bag, 147.

"Constitutional Aspects of Employers' Liability Legislation."—19 Green Bag, 80.

"A Question of Ratification in Insurance Law. (Right of insured to ratify, after loss, unauthorized act of agent in procuring policy.)"—19 Green Bag, 93.

"The Enforcement of International Arbitral Awards."—32 Law Magazine and Review, 155.

"Restraint of the Insane."—64 Central Law Journal, 187.

"Marriage in Roman Law."—16 Yale Law Journal, 303.

"Peculiarities of the Real Estate Laws of New York."—16 Yale Law Journal, 328.

"The Law of Contracts. (Equitable jurisdiction in regard to contracts of employment.)"—43 Canada Law Journal, 121.

"The Japanese School Incident at San Francisco from the Point of View of International and Constitutional Law."—5 Michigan Law Review, 326.

"The Abuse of the Corporation Charter."—64 Central Law Journal, 49.

"Is One Acquitted of Crime by Reason of Insanity Deprived of His Liberty without Due Process of Law if Committed without Further Proceedings?"—10 Law Notes, 228.

"The Prevention of Trusts and Monopolies."—64 Central Law Journal, 147.

"Is the Power of the Legislature to Control the Descent of Property Plenary?"—34 National Corporation Reporter, 9.

"The Law of Bank Checks (Practical Series.)"—24 Banking Law Journal, 171.

"The Negotiability of Instruments Payable in 'Current Funds' or 'Currency.'"—24 Banking Law Journal, 177.

"Compensation for Property Destroyed to Stop the Spread of Conflagration."—1 Illinois Law Review, 501.

"The Modern Conception of Animus."—5 Criminal Law Journal of India, 41.

"The Alien Contract Labor Law."—22 Political Science Quarterly, 49.

"The Philippines and the Philipinos."—22 Political Science Quarterly, 105.

"Abolition of Death Penalty."—22 Law Register, 195.

The Humorous Side.

HAD NOT LOST HIS TITLE.—From Michigan comes the following certificate given by an abstracter as to a certain person's title to a piece of land: "Mr.———— appears to have all the title in this property that he ever had; but the records do not show that he ever had any property."

AN AGISTER'S LIEN.—A newspaper item a few weeks ago told the story of a woman who brought a habeas corpus proceeding to obtain the release of her one-year-old child, whom another woman held as security for a board bill which she claimed to be due her for keeping the child. The judge gave her to understand that the child was payable on demand whether the board bill was or not.

HABEAS CORPUS IN THE PHILIPPINES.—A clipping sent from Manila tells the story of a justice of the peace whose inventiveness got him into trouble. He had a great dislike for a certain man, and determined to send him to jail; but, as the man had committed no crime, the justice handed down the following sentence: "I hereby sentence you to less than six months for the crime of habeas corpus committed in its maximum degree." On the strength of this sentence the man was put in jail, but finally, when the facts got to the ears of the authorities, the man was liberated; and the sequel to the case was a two years' sentence of the justice for exceeding his jurisdiction and illegally sending the man to prison.

IOWA JUSTICE.—A correspondent sends us the following copy of a writ issued by a justice of the peace:

"In The name of thes State Of Iowa You are hereby commanded To Seize The house of the Defendant Burns Togather with Apperal And belongings And Detain the same untill released By Due Course Of Low

"Giving Under My Hand (4) Day May A. D. 1905."

"WE'RE MIGHTY APT TO."—"Ever sence I was a boy," said Squire Judkins, giving evidence in the meanwhile that he was a party to the old southern custom of chewing tobacco, "it has been my habit to 'tend the Fall term of the Circuit Court of Raccoon county. I allers love to hear a lawyer who is well varsed in the peculiarities of his profession, handle a case; and we had 'em in them times that couldn't be superseeded by anybody, whether on the hustlings, in the forerum or in the pulpit." "I remember," continued the squire reminiscently, "that a case was tried where" Squire Pike represented the plaintiff, and Squire Starke was on t'other side.

"Pike introduced a witness and after askin' one or two questions, turned him over to t'ther side to be cross-examined.

"No questions," says Starke.

"We rest for the plaintiff, may it please the Court," says Pike.

"But, Mr. Pike," says the Judge, "how do you expect to get along on that evidence? This is a suit in detinoo, and you haven't proved that the defendant was in possession of the property."

"I am aware of that, Yer Honor," replied Pike; "I expect to prove that by cross-examinin' the defendant's witnesses."

"But suppose he doesn't put up any witnesses," says the Court.

"Then Squire Starke arose and says sezze, "We're mighty apt to, Yer Honor."

"And he did put up a witness, and Pike did prove the missin' fact on his cross-examination. I tell you, we had some smart ones, them days."